



(4337-15)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 63

[201A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1076-AF53

Indian Child Protection and Family Violence Prevention; Minimum Standards of Character

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Interim final rule.

SUMMARY: This interim final rule updates the minimum standards of character to ensure that individuals having regular contact with or control over Indian children have not been convicted of certain types of crimes or acted in a manner that placed others at risk. These updates reflect updates made to the list of crimes by amendments to the Indian Child Protection and Family Violence Prevention Act.

DATES: This interim final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Submit comments by [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- Federal rulemaking portal www.regulations.gov. The rule is listed under the agency name “Bureau of Indian Affairs.”
- Email: comments@bia.gov
- We cannot ensure that comments received after the close of the comment period (see DATES) will be included in the docket for this rulemaking and considered.

Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Appel, Director,
Office of Regulatory Affairs & Collaborative Action – Indian Affairs, (202) 273-4680;
elizabeth.appel@bia.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of Rule

The Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. 3201 *et seq.*, requires the Secretary of the Interior to prescribe minimum standards of character for positions that involve duties and responsibilities involving regular contact with, or control over, Indian children. The Department prescribed the minimum standards of character in its regulations at 25 CFR 63.12 and 63.19. As a result, no applicant, volunteer, or employee of Interior may be placed in a position with regular contract with or control over Indian children if that person has been found guilty of, or entered a plea of *nolo contendere* or guilty to, certain offenses. Before 2000, the offenses listed in the regulation matched the offenses listed in the Act: any offense under Federal, State, or Tribal law involving crimes of violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons.

In 2000, Congress updated the Act to clarify which types of offenses are disqualifying. *See* Pub. L. 106-568, revising 25 U.S.C. 3207(b). Specifically, the 2000 updates replaced “any offense” with “any felonious offense, or any of two or more misdemeanor offenses,” and added “offenses committed against children.” This interim final rule would update the Department’s regulations, at sections 63.12 and 63.19, to reflect the updated language of the Act and add a definition to define the phrase “offenses committed against children.” The definition is the same as the Indian Health Service (IHS) definition of “offenses committed against children” in the regulations establishing minimum standards of character under the Indian Child Protection and Family Violence Prevention Act for those working in the IHS. *See* 42 CFR 136.403. Using the same definition provides consistency in these standards across Federal agencies.

This rule also includes an explanation of whether a conviction, or plea of nolo contendere or guilty, should be considered if there has been a pardon, expungement, set aside, or other court order of the conviction or plea. As the IHS regulation provides, this rule provides that all convictions or pleas of nolo contendere or guilty should be considered in making a determination unless a pardon, expungement, set aside or other court order reaches the plea of guilty, plea of nolo contendere, or the finding of guilt. *See* 42 CFR 136.407. Including this contingency also provides consistency in the standards across Federal agencies.

With this regulatory update, the list of offenses will include any felonious offense or any two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons, or any offenses committed against children. Practically, what this rule means is that an individual with a single misdemeanor offense involving certain crimes is no longer prohibited from holding positions for which that individual is otherwise qualified. This

rule remedies an overly broad prohibition, as determined by Congress in the 2000 amendments. This rule also means that an individual with offenses against children would be prohibited from holding positions involving regular contact with, or control over, Indian children, regardless of that individual's qualifications.

II. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order also directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more;
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175 and Departmental policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy under the criteria in Executive Order 13175 and have determined this regulation does not require consultation because it is merely updating discrete provisions of the regulation to match controlling statutory law.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an

administrative nature (for further information, see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of this Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "ADDRESSES" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

M. Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment –

including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

N. Determination to Issue an Interim Final Rule with Immediate Effective Date

We are publishing this interim final rule with a request for comment without prior notice and comment, as allowed under 5 U.S.C. 553(b). Under section 553(b) we find that there is good cause to effectuate this rule without prior notice, and comments are unnecessary and would be contrary to the public interest. This rule is necessary to ensure that individuals who have committed offenses against children are not approved for positions involving regular contact with, or control over, Indian children in contravention of statutory law.

As allowed under 5 U.S.C. 553(d)(3), the effective date of this rule is the date of publication in the Federal Register. Good cause for an immediate effective date exists because the delay in publishing this rule would potentially result in approval or rejection of individuals for positions involving regular contact with, or control over, Indian children, who statutorily should not be approved or rejected. We are requesting comments on this interim final rule. We will review any comments received and, by a future publication in the Federal Register, address any comments received.

List of Subjects in 25 CFR Part 63

Child welfare, Domestic violence, Employment, Grant programs-Indians, Grant programs-social programs, Indians.

For the reason stated in the preamble, the Department of the Interior, Bureau of Indian Affairs amends part 63 in title 25 of the Code of Federal Regulations as follows:

PART 63 – INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PROTECTION

1. Revise the authority for part 63 as follows:

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 13, 200, 3201 *et seq.*; 42 U.S.C. 13041.

Subpart A – Purpose, Policy, and Definitions

2. In § 63.3, add in alphabetical order a definition for “Offenses committed against children” to read as follows:

§ 63.3 Definitions.

* * * * *

Offenses committed against children means any felonious or misdemeanor crime under Federal, State, or Tribal law committed against a victim that has not attained the age of eighteen years. In determining whether a crime falls within this category, the applicable Federal, State, or Tribal law under which the individual was convicted or pleaded guilty or nolo contendere is controlling.

* * * * *

Subpart B – Minimum Standards of Character and Suitability for Employment

3. Revise § 63.12 to read as follows:

§ 63.12 What are minimum standards of character?

Minimum standards of character are established by an employer and refer to identifiable character traits and past conduct. An employer may use character traits and past conduct to determine whether an applicant, volunteer, or employee can effectively perform the duties of a particular position without risk of harm to others. Minimum standards of character ensure that no applicant, volunteer, or employee will be placed in a position with regular contact with or control

over Indian children if he/she has been found guilty of or entered a plea of nolo contendere or guilty to any felonious offense, or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution; crimes against persons; or offenses committed against children.

4. In § 63.19, revise paragraph (a) and add paragraph (c) to read as follows:

§ 63.19 When should an employer deny employment or dismiss an employee?

(a) An employer must deny employment or dismiss an employee when an individual has been found guilty of or entered a plea of guilty or nolo contendere to any felonious offense, or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution; crimes against persons; or offenses committed against children, except as provided in paragraph (c) of this section.

* * * * *

(c) An employer may consider if a pardon, expungement, set aside, or other court order reaches the plea of guilty, plea of nolo contendere, or the finding of guilt.

Tara Sweeney,

Assistant Secretary — Indian Affairs.

[FR Doc. 2020-11974 Filed: 6/22/2020 8:45 am; Publication Date: 6/23/2020]